

ORDINANCE NO. 2021-03

**AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE,
FLORIDA, CREATING ARTICLE II OF CHAPTER 8,
“ENVIRONMENT,” OF THE VILLAGE CODE OF
ORDINANCES RELATING TO LANDSCAPE IRRIGATION;
PROVIDING FOR SEVERABILITY; PROVIDING FOR
CODIFICATION; PROVIDING FOR CONFLICTS; AND
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Village of Key Biscayne (“Village”) is committed to environmental conscientiousness and leadership, and towards that end has previously adopted ordinances that prohibit the sale or use of polystyrene food service articles by Village contractors, regulate the use of fertilizers within the Village, and control wasteful water uses during water shortage conditions and emergencies; and

WHEREAS, unrestricted, wasteful, and unnecessary landscape irrigation can be a major contributing factor to the creation of water shortage conditions and water resource strain; and

WHEREAS, pursuant to Florida Statutes Section 373.042, the South Florida Water Management District (“District”) created Chapter 40E-24 of the Florida Administrative Code to protect Florida’s water resources and regulate wasteful landscape irrigation practices by restricting the days when property owners can conduct landscape irrigation; and

WHEREAS, on February 19, 1991, Miami-Dade County (“County”) adopted an ordinance creating Section 32-8.2 of the County Code of Ordinances (“Code”) to further restrict wasteful landscape irrigation practices by limiting the times when property owners are permitted to conduct landscape irrigation; and

WHEREAS, the Village currently enforces Section 32-8.2 of the County Code to curtail wasteful landscape irrigation practices; and

WHEREAS, the Village desires to create Article II of Chapter 8 of the Village Code of Ordinances to adopt landscape irrigation regulations consistent with the rules and regulations implemented by the District under Chapter 40E-24 pursuant to Florida Statute Section 373.042 and the County under Section 32-8.2 of the County Code in order to promote greater awareness, compliance, and enforcement of landscape irrigation regulations within the Village; and

WHEREAS, the Village Council finds that this Ordinance is necessary for the preservation and improvement of the environment, and in the best interest of the public health, safety, and welfare of the Village’s residents and visitors.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL
OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:¹**

¹ Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with **highlighted double-strikethrough** and double underline.

Section 1. Recitals. That each of the above recitals are true and correct and incorporated herein by this reference.

Section 2. Creating Article II of Chapter 8 of the Village Code. That Article II of Chapter 8, of the Code of Key Biscayne, Florida, is here by created to read as follows:

CHAPTER 8 – ENVIRONMENT

ARTICLE II. – ~~RESERVED~~ LANDSCAPE IRRIGATION

Sec. 8-51. - Intent and Purpose.

The purpose of this Article is to conserve the Village's Water Resources by regulating Landscape Irrigation practices. The Village intends to achieve this purpose by limiting the days when property owners can conduct Landscape Irrigation based on property Addresses; restricting the time of day when Users may conduct Landscape Irrigation to reduce likelihood of excessive water evaporation and disease spread; and prohibiting Wasteful and Unnecessary water use. This Article encourages water conservation practices by exempting irrigation methods that conserve the Village's Water Resources efficiently and effectively, such as Low Volume Hand Watering, Low Volume Irrigation, Micro-Irrigation, and the use of Reclaimed Water. By regulating Landscape Irrigation practices, the Village seeks to prevent the development of water shortage conditions, and protect the Village's Water Resources, the environment, water bodies, the economic well-being of the Village's residents, and the health of the public.

Sec. 8-52. - Definitions.

For the purpose of this article, the following terms, phrases, words, and their derivatives shall have the meaning listed below. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

- (1) "Address" means the "house number" (a numeric or alphanumeric designation) that, together with the street name, describes the physical location of a specific property. This excludes post office box numbers.
- (2) "Athletic Play Area" means all sports fields and other athletic play surfaces.
- (3) "District" means the South Florida Water Management District, a governmental entity created under Chapter 373 of the Florida Statutes.
- (4) "Enforcement Officer" means any authorized agent or employee of the Village whose duty it is to ensure compliance with the Code in accordance with State and local law.
- (5) "Even Numbered Address" means an Address ending in the numbers 0, 2, 4, 6, 8, the letters A-M, or, rights-of-way or other locations with no Address.
- (6) "Existing Landscaping" means any Landscaping which has been planted and in the ground for more than ninety days.

- (7) “Landscaping” means shrubbery, trees, lawns, sod, grass, ground covers, plants, vines, ornamental gardens, and such other flora not intended for resale, which are situated in such diverse locations as residential landscapes, recreation areas, public and commercial establishments, public medians, and rights-of-way, except Athletic Play Areas.
- (8) “Landscape Irrigation” means the outside watering of Landscaping.
- (9) “Low Volume Hand Watering” means the watering of landscape by one person, with one hose, fitted with a self-canceling or automatic shutoff nozzle.
- (10) “Low Volume Irrigation” means the use of equipment and devices specifically designed to allow the volume of water delivered to be limited to a level consistent with the water requirement of the plant being irrigated, and to allow that water to be placed with a high degree of efficiency in the root zone of the plant. Overhead irrigation and flood irrigation are not included.
- (11) “Micro-Irrigation” means the application of small quantities of water on or below the soil surface as drops or tiny streams of spray through emitters or applicators placed along a water delivery line. Micro-Irrigation includes a number of methods or concepts, such as bubbler, drip, trickle, mist, or microspray, and subsurface irrigation.
- (12) “New Landscaping” means any Landscaping which has been planted in the ground for ninety days or less.
- (13) “Odd Numbered Address” means an Address ending in the numbers 1, 3, 5, 7, 9, or the letters N-Z.
- (14) “Reclaimed Water” means wastewater that has received at least secondary treatment and basic disinfection, and is reused after flowing out of a wastewater treatment facility as defined by Rule 62-40.210, F.A.C.
- (15) “User” means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organizations, the U.S., Florida, all political subdivisions, regions, districts, municipalities, and public agencies thereof, and/or any group of people acting as an organized entity which directly or indirectly takes water from Water Resources, including Users of private or public utility systems, or individual wells or pumps.
- (16) “Wasteful and Unnecessary” means allowing water to be dispersed without any practical purpose to the water use; for example, excessive Landscape Irrigation, leaving an unattended hose on a driveway with water flowing, allowing water to be dispersed in a grossly inefficient manner regardless of the type of water use; for example, allowing Landscape Irrigation water to unnecessarily fall onto pavement, sidewalks, and other impervious surfaces; or allowing water flow through a broken or malfunctioning water delivery or Landscape Irrigation system.
- (17) “Water Resource” means any and all water on or beneath the surface of the ground, including natural or artificial lakes, ponds, or diffused surface water, and water percolating, standing, or flowing beneath the surface of the ground.

Sec. 8-53. – Applicability.

The provisions of this article shall apply to all Users providing Landscape Irrigation from all Water Resources within the boundaries of the Village, except for the use of Reclaimed Water, irrigation of Athletic Play Areas, or as otherwise indicated in this Article.

Sec. 8-54. –Landscape Irrigation Regulations.

- (1) Irrigation of Existing Landscaping shall comply with the following Landscape Irrigation scheduling restrictions:
 - (a) Properties with Even Numbered Addresses shall conduct Landscape Irrigation only on Thursdays and/or Sundays.
 - (b) Properties with Odd Numbered Addresses shall conduct Landscape Irrigation only on Wednesdays and/or Saturdays.
 - (c) Properties with irrigation systems that irrigate both Even Numbered Addresses and Odd Numbered Addresses within the same zones, ~~such as multi-family units, homeowners' associations, and condominiums,~~ rights-of-way with no Address, and other locations with no Address shall be irrigated only on Thursdays and/or Sundays.
 - (d) Notwithstanding the provisions of this Subsection, where a multifamily property contains multiple Landscape Irrigation zones, a User may propose an alternative Landscape Irrigation schedule to the Village Manager, which shall identify, at a minimum, all Landscape Irrigation zones on the property and up to two days on which Landscape Irrigation will be conducted in each Landscape Irrigation zone. The Village Manager, or designee, may accept, accept with conditions, or reject the alternative Landscape Irrigation schedule. The Village Manager, or designee, may not unreasonably refuse or reject an alternative Landscape Irrigation schedule.
- (2) Irrigation of New Landscaping shall comply with the following provisions:
 - (a) A ninety day establishment period shall begin on the day the New Landscaping is installed. New Landscaping shall be installed within fourteen days from the date of purchase, which may be demonstrated with a receipt or invoice indicating the date of purchase or delivery.
 - (b) Users may irrigate New Landscaping once on the day the landscaping is installed without regard to the Landscape Irrigation schedule restrictions. Irrigation of the soil immediately prior to the installation of the New Landscaping is allowed without regard to the Landscape Irrigation schedule restrictions.
 - (c) Users may irrigate New Landscaping which has been transplanted for thirty days or less on any day except Friday.

- (d) Users may irrigate New Landscaping which has been in place for thirty-one to ninety days on any day except Tuesday, Friday, and Sunday.
- (e) Irrigation of New Landscaping is limited to areas only containing the New Landscaping. An entire zone of an irrigation system shall only be utilized for Landscape Irrigation under this subsection if the zone contains at least 50% New Landscaping. If a zone contains less than 50% new landscaping, or if the New Landscaping is in an area that will not typically be Irrigated by an irrigation system, only the individual new plantings are eligible for additional irrigation. Targeted watering may be accomplished by Low Volume Hand Watering or any appropriate method that isolates and waters only the New Landscaping.
- (3) Any User who purchases and installs an automatic landscape irrigation system shall properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture. Users shall not operate or cause, let, permit, allow, or suffer the operation of any irrigation system or device in a Wasteful and Unnecessary manner including, but not limited to, watering paved areas, sidewalks, driveways, and parking lots.
- (4) Landscape Irrigation shall be prohibited between the hours of 10:00 A.M. and 4:00 P.M., except as otherwise provided in this Article.
- (5) Any restrictions or measures issued during a Declaration of Water Shortage Condition or Water Shortage Emergency pursuant to Chapter 8, Article III, "Water Shortage Regulations," of the Village Code shall supersede the provisions of this article that are less restrictive for the duration of the declaration.
- (6) Exceptions.
 - (a) Landscape Irrigation systems may be operated during restricted days and times for cleaning, maintenance, and repair purposes with an attendant on site in the area being tested. Landscape Irrigation systems may routinely be operated for such purposes no more than once per week, and the run time for any one test shall not exceed ten minutes per zone on a property.
 - (b) Users may conduct Landscape Irrigation to water-in fertilizers, insecticides, pesticides, fungicides, and herbicides, when recommended by the manufacturer, by federal, state, or local law, or best management practices if:
 - i. Watering-in is limited to one application, unless the need for more than one application is stated in the directions for application specified by the manufacturer; and
 - ii. Watering-in is conducted by a professional licensed applicator.
 - (c) Any plant material may be watered using Low Volume Irrigation, Micro-Irrigation, Low Volume Hand Watering method, rain barrels, cisterns, or other similar rain-harvesting devices without regard to the Landscape Irrigation schedule restrictions.
 - (d) Landscape Irrigation systems that employ soil moisture sensors or weather-based irrigation controllers may be operated without regard to the Landscape

Irrigation schedule restrictions, subject to a variance approved by the District in accordance with the provisions of Section 373.62(7)(a), Florida Statutes.

Sec. 8-55. – Variances.

(1) The provisions of this Article shall not apply to a User who seeks and is granted a variance from the provisions of this Article. In considering a request for a variance, the Village will consider whether application of this Article would lead to an unreasonable or unfair burden on the User. A User applying for a variance shall bear the burden of showing that an unreasonable or unfair result would arise by demonstrating with particularity that:

- (a) The provisions of this Article result in substantial economic, health, or other hardship on the User or those served by the User;
- (b) The hardship is peculiar to the person or the affected property and is not self-imposed; and
- (c) Approval of the requested variance would be consistent with the general intent and purpose of this Article.

A variance from the provisions of this Article may be granted administratively upon application to the Village Manager. Such variance shall be valid for 12 months and may be renewed upon application to the Village.

(2) The Village shall recognize all irrigation variances or waivers issued by the District.

Sec. 8-56. – Enforcement; penalties.

(1) Following the adoption of this Article, the Village shall engage in public education efforts to inform the public of the provisions of this Article.

(2) Beginning ~~January~~ August 1, 2021, Enforcement Officers shall enforce all provisions of this Article.

(3) In addition to any other remedies available by law, the Village may issue a civil violation notice pursuant to Chapter 2 of this Code. Notwithstanding, the Village may provide a courtesy warning to Users for a violation of the provisions of the Article. Violations of the provisions of this Article shall be on a per occurrence basis and subject to the following penalties:

- (a) First violation: ~~\$250~~75;
- (b) Second and subsequent violations: \$500.

Section 3. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. **Codification.** That it is the intention of the Village Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Village's Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

Section 5. **Conflicts.** That all ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. **Effective Date.** That this Ordinance shall become effective immediately upon final adoption on second reading.

PASSED on first reading on the 25th day of August, 2020.

PASSED AND ADOPTED on second reading on the 23rd day of February, 2021.


MICHAEL W. DAVEY, MAYOR

ATTEST:


JOCELYN B. KOCH
VILLAGE CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY


WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

MIAMI DAILY BUSINESS REVIEW

Published Daily except Saturday, Sunday and
Legal Holidays

Miami, Miami-Dade County, Florida

STATE OF FLORIDA COUNTY OF MIAMI-DADE:

Before the undersigned authority personally appeared GUILLERMO GARCIA, who on oath says that he or she is the DIRECTOR OF OPERATIONS, Legal Notices of the Miami Daily Business Review f/k/a Miami Review, a daily (except Saturday, Sunday and Legal Holidays) newspaper, published at Miami in Miami-Dade County, Florida; that the attached copy of advertisement, being a Legal Advertisement of Notice in the matter of

VILLAGE OF KEY BISCAYNE - SECOND READING NOTICE -
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in the XXXX Court,
was published in said newspaper in the issues of

02/12/2021

Affiant further says that the said Miami Daily Business Review is a newspaper published at Miami, in said Miami-Dade County, Florida and that the said newspaper has heretofore been continuously published in said Miami-Dade County, Florida each day (except Saturday, Sunday and Legal Holidays) and has been entered as second class mail matter at the post office in Miami in said Miami-Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Guillermo Garcia

Sworn to and subscribed before me this
12 day of FEBRUARY, A.D. 2021

C. R. Davis

(SEAL)

GUILLERMO GARCIA personally known to me



VILLAGE OF KEY BISCAYNE OFFICE OF THE VILLAGE CLERK SECOND READING NOTICE

Notice is hereby given that the following ordinances will be considered on Second Reading by the Village Council of the Village of Key Biscayne at a meeting to be held on Tuesday, February 23, 2021 at 6:00 p.m., in the Council Chamber, located at 560 Crandon Boulevard, Key Biscayne, Florida:

A CAPITAL PROJECT AUTHORIZING ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, SELECTING FERREIRA CONSTRUCTION SOUTHERN DIVISION CO., INC. FOR THE VILLAGE'S BEACH RENOURISHMENT MAINTENANCE PROJECT IN AN AMOUNT NOT TO EXCEED \$1,836,564; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, CREATING ARTICLE II OF CHAPTER 8, "ENVIRONMENT," OF THE VILLAGE CODE OF ORDINANCES RELATING TO LANDSCAPE IRRIGATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING ORDINANCE NO. 2020-04 WHICH ADOPTED THE BUDGET FOR FISCAL YEAR 2020- 2021 BY REVISING THE 2020-2021 FISCAL YEAR BUDGET; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

The proposed ordinances may be inspected by the public at the Office of the Village Clerk. Any person wishing to address the Village Council on any item at this Public Hearing may call (305) 365-7569, Zoom Meeting ID: 231 627 8415 and be heard with respect to the proposed Ordinances.

In accordance with the Americans With Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this proceeding because of that disability should contact the Office of the Village Clerk, 88 West McIntyre Street, Suite 220, Key Biscayne, Florida 33149, telephone number (305) 365-5506, not later than two business days prior to such proceeding.

Should any person desire to appeal any decision of the Village Council with respect to any matter to be considered at this meeting, that person shall insure that a verbatim record of the proceedings is made including all testimony and evidence upon which any appeal may be based (F.S. 286.0105).

Comments of any interested party relative to this matter may be submitted in writing via email to publiccomments@keybiscayne.fl.gov.

2/12

Jocelyn B. Koch
Village Clerk
21-84/0000513331M